A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

S.A. No. 316/2005

Single Bench: **Hon'ble Shri Dilip Raosaheb Deshmukh, J.**

Appellant Defendant No. 1		Ishrar Hussain, Aged 70 years, S/o Farjan Hussain, R/o. Village- Gopalpur, Tahsil – Katghora, District-Korba (CG)
		Versus
Respondent Plaintiff	1.	Mst. Budhwari Bai, Aged-48 years, W/o. Awadhram, R/o. Village-Mudpar, Tahsil-Katghora, District-Korba(CG)
Respondents Defendants	2.	Mst. Baredi Bai, Aged-43 years, D/o. Narayan, R/o. Chorbhatti, Tahsil-Katghora, District-Korba (CG)
	3.	Mst. Bhag Bai, Aged-39 years, D/o. Narayan, R/o. Kharmora, Jail Ke pass, Korba, Distt. Korba
	4.	State of Chhattisgarh, Through: Collector, Korba, District-Korba (CG)

Present:-
Radheshyam Gupta, learned counsel for the appellant.
Ashok Swarnkar, learned counsel for the respondents.

ORAL JUDGMENT
(Passed on 5th April, 2007)

Learned counsel for the appellant does not press M.C.P. No. 957/2007 for stay and also I.A. No. 3652/2006 for out of turn listing the case which are accordingly dismissed as not pressed.

2. Learned counsel for the appellant prays that this S.A may be heard finally today. Prayer is not opposed.

3. The appeal is heard finally today.

4. Brief facts are that in civil suit No. 16-A/2001, the Civil Judge Class-1, Katghora vide judgment dated 24.10.2003 passed a decree in favour of the respondent No. 1 herein/plaintiff for declaration of title and vacant possession of the suit lands against the appellant herein/defendant No.1. Copy of the judgment and decree was applied for by the counsel on

6.11.2003 and received on 5.12.2005. The appellant/defendant No. 1 preferred first appeal before the District Judge, Korba on 9.8.2004 along with an application under Section 5 of the Limitation Act duly supported by an affidavit for condonation of delay. It was submitted that on 25.11.2003, the appellant had gone to his relatives' house in Rewa where he had fallen ill due to viral Hepatitis and PUO. In support of the application, the appellant had filed the medical certificate of Dr. Debashish Chatterjee stating that the appellant was undergoing treatment for viral Hepatitis and PUO from 5.12.2003 to 12.7.2004.

5. The respondent No. 1 herein/plaintiff Budhwari Bai and others opposed the application but did not file any affidavit or document to show that the contentions raised by the appellant in the application under Section 5 of the Limitation Act were not true.

6. The First Appellate Court observed that the appellant did not file any medical certificate in support of his application and taking a highly technical view dismissed the appeal as barred by limitation.

7. The following substantial question of law was framed in this appeal.

> "Whether the lower Appellate Court was not justified in dismissing the application filed under Section 5 of the Limitation Act.?"

8. It is settled law that the primary function of the Court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. In *Ram Nath Sao @ Ram Nath Sahu & Ors Vs. Gobardhan Sao & Ors* **2002 SAR (Civil) 302 Supreme Court** it was held that the expression "sufficient cause" should receive liberal construction so as to advance substantial justice. In a case where no negligence or inaction or want of bona fide is imputable to a party acceptance of explanation given by the appellant in the application under Section 5 of the Limitation Act should be the rule and refusal an exception. It has also to be borne in mind that the appellant would not

gain by filing the appeal late deliberately. The view taken by the First Appellate Court is clearly erroneous for two reasons. Firstly, an application under Section 5 of the Limitation Act was not only supported by an affidavit but was also supported by the medical certificate of Dr. Debashish Chaterjee which had not been rebutted by the respondents. This fact was overlooked by the learned Court below. The respondents had placed no material before the First Appellate Court to show that the grounds raised by the appellant in the application under Section 5 of the Limitation Act were false or malafide. In this view of the matter, the view taken by the First Appellate Court is contrary to law. A liberal and pragmatic view ought to have been taken by the First Appellate Court in order to advance substantial justice between the parties.

9. In this view of the matter, this appeal is allowed. Accordingly, the substantial question of law is answered in the affirmative. The impugned order dated 1.4.2005 passed by the District Judge, Korba in civil appeal No. 64A/2004 is set aside. The application under Section 5 of the Limitation Act filed by the appellant is allowed. The delay in filing the appeal is condoned. The District Judge Korba shall now hear and dispose of the appeal on merits.

10. Parties are directed to appear before the District Judge, Korba on 13.6.2007. No further notice shall be necessary. In view of the above fact, there shall be no order as to costs.

Sd/-
Dilip Raosaheb Deshmukh
Judge